



GAIL FARBER, Director

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331

<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

February 09, 2016


The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

40 February 9, 2016


PATRICK OGAWA
ACTING EXECUTIVE OFFICER

**MEMORANDUM OF AGREEMENT BETWEEN
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT AND
THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER
REGARDING THE BRANFORD SPREADING BASIN PROJECT
(SUPERVISORIAL DISTRICT 3)
(3 VOTES)**

SUBJECT

This action is to enter into a Memorandum of Agreement with the City of Los Angeles Department of Water and Power for the Branford Spreading Basin Project. The purpose of the project is to enhance the groundwater recharge capacity of the Los Angeles County Flood Control District's Branford Spreading Basin. Under the proposed Memorandum of Agreement, the City of Los Angeles Department of Water and Power would contribute up to \$550,000 towards the construction of the project.

IT IS RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find that the action set forth in this Board letter is not a project pursuant to the California Environmental Quality Act.
2. Authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into a Memorandum of Agreement with the City of Los Angeles Department of Water and Power providing for the City of Los Angeles Department of Water and Power to contribute up to \$550,000 toward the construction costs for the Branford Spreading Basin Project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into the enclosed Memorandum of Agreement with the City of Los Angeles Department of Water and Power (DWP). This will result in funding from DWP of up to \$550,000 for construction costs for the Branford Spreading Basin Project.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provisions of Operational Effectiveness/Fiscal Sustainability (Goal 1) and Integrated Services Delivery (Goal 3). This action is consistent with these goals as it will augment the District's funding sources and will maintain a collaborative partnership with a local agency to improve spreading grounds operations for enhanced water conservation for residents of Los Angeles County.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

Currently, the estimated construction contract cost of the project is \$1,100,000. Under this agreement, DWP's maximum contribution to the District would be \$550,000. The District will fund the balance of the project's costs. Funding for this project is included in the Flood Control District Fund Fiscal Year 2015-16 Budget. The District will fund the project over a period of three fiscal years. Funding for the remainder of the project cost will be made available through the annual budget process.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The District has an ongoing interest and commitment to partner with local agencies to maximize water conservation and groundwater recharge. DWP is a proprietary department of the City of Los Angeles (City) and a municipal utility that provides water and electric services to residents, businesses, and industries in the City. The City possesses the right to the native groundwater of the San Fernando Groundwater Basin. DWP has historically utilized local groundwater supply to support approximately 11 percent of the City's total water demand.

The District proposes to remove sediment from the bottom of Branford Spreading Basin, install a pump and a concrete pump station at the spreading basin, and construct a pipeline bridge across the Tujunga Wash Channel to convey flows from the spreading basin to the Tujunga Spreading Grounds. When completed, these improvements are expected to increase the groundwater recharge to the San Fernando Groundwater Basin by as much as 600 acre-feet per year. The District will complete design plans and specifications; schedule construction; and be responsible for environmental documentation, permitting, administration, and project management. The Department of Public Works will return to the Board for the project's approval.

DWP will provide a maximum of \$550,000 to the District for the project's construction cost. The agreement has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The agreement is not a project pursuant to the California Environmental Quality Act (CEQA) because it is an activity that is excluded from the definition of a project by Section 15378(b) of the CEQA Guidelines. This agreement creates a funding mechanism that does not involve any commitment to a specific project, which may result in a potentially significant physical impact on the environment.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The agreement with DWP will not have any immediate impact on current services. If the project is ultimately approved and implemented, it will enhance groundwater recharge in the San Fernando Groundwater Basin and increase the local water supply for residents of Los Angeles County.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Water Resources Division.

Respectfully submitted,

A handwritten signature in black ink that reads "Gail Farber". The signature is written in a cursive, flowing style.

GAIL FARBER

Director

GF:CS:sh

Enclosures

c: Chief Executive Office (Rochelle Goff)
County Counsel (Mark Yanai)
Executive Office

COPY

**Memorandum of Agreement (Agreement)
Between the Los Angeles Department of Water and Power (LADWP) and the
Los Angeles County Flood Control District (District) Regarding the Branford
Spreading Basin Project (Project)**

AGREEMENT

Agreement is made and entered into by and between District and LADWP hereinafter referred to as "Parties" or individually as "Party."

WITNESSETH

WHEREAS, the City of Los Angeles (City) is home to approximately four million residents who depend on reliable sources of water; and

WHEREAS, 88 percent of the water supply in the City is imported from sources outside of the region; and

WHEREAS, in addition to imported water, the local water supply is a reliable source of water that depends on groundwater recharged from a variety of sources, including stormwater; and

WHEREAS, local groundwater supply is a key resource that LADWP has historically utilized to support approximately eleven percent of the City's total water demand; and

WHEREAS, capturing additional stormwater to augment groundwater recharge is vital to sustain the long-term reliability of the City's local groundwater supply; and

WHEREAS, the City's water rights in five local groundwater basins are adjudicated, with the San Fernando Groundwater Basin (SF Basin) being the largest of the five basins; and

WHEREAS, the City possesses the right to the surface waters of the Los Angeles River and the native groundwater of the SF Basin in accordance with the California Supreme Court case of *The City of Los Angeles vs. City of San Fernando*, et al., (1975) 14 Cal. 3d 199 and of the Judgment *The City of Los Angeles vs. City of San Fernando*, et al., Los Angeles Superior Court Case No. 650079, (January 26, 1979); and

WHEREAS, the City is a beneficiary of stormwater capture and recharge that may improve the condition of the SF Basin and potentially increase the long-term native safe yield to augment the City's local water supply; and

WHEREAS, District is a special district organized and operating under provisions of the Los Angeles County Flood Control Act; and

WHEREAS, pursuant to the Los Angeles County Flood Control Act, the objectives and purposes of District include the conservation of stormwater for beneficial and useful purposes, and District owns and manages flood control and water conservation facilities in the County of Los Angeles (County), that capture stormwater and replenish groundwater basins, including the SF Basin; and

WHEREAS, District owns and operates Branford Spreading Basin (Branford SB) to recharge groundwater in the SF Basin; and

WHEREAS, District operates Tujunga Spreading Grounds (Tujunga SG) to recharge groundwater in the SF Basin; and

WHEREAS, District and LADWP are proposing a project to improve the capacity and operations of Branford SB by removing sediment from the bottom of the Branford SB and also constructing a pump station, and pipeline to convey flows to Tujunga SG; and

WHEREAS, when constructed, Project will increase the recharge capacity at Branford SB and Tujunga SG by approximately 600 acre-feet per year (AFY), which will significantly increase the amount of stormwater that is captured and recharged into the SF Basin; and

WHEREAS, LADWP and District have estimated Project cost to be \$1.1 million; and

WHEREAS, LADWP has agreed to provide up to a maximum of \$550,000 to District for construction costs; and

WHEREAS, District, through other funding sources, has agreed to fund the remaining costs for construction and the total cost for design.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties, it is hereby agreed as follows:

1. PROJECT INFORMATION

a. Background

Project is a partnership between LADWP and District to improve the capacity and operations of Branford SB by removing sediment from the bottom of the Branford SB and also constructing a pump station, and pipeline to convey flows to Tujunga SG. By improving the Branford SB, an additional 600 AFY could be conserved at both Branford SB and Tujunga SG.

b. Location

Project is located in the San Fernando Valley area of the City, adjacent to the Tujunga SG, and bounded by the Tujunga Wash on the south, the Pacoima Diversion Channel on the west, and Arleta Avenue on the east.

c. Scope

Branford SB has lower percolation rates compared to those at Tujunga SG. Project will remove sediment from the bottom of Branford SB, install a pump and concrete pump station at the spreading basin, and construct a pipeline bridge across the Tujunga Wash Channel to convey flows to the Tujunga SG. Project will improve groundwater recharge, flood protection, and water quality.

d. Budget and Funding

Total estimated construction cost of Project is \$1.1 million. LADWP has committed to fund a portion of the construction costs, for up to a maximum of \$550,000.

e. Schedule

Project design will start in Fall 2015. Construction is expected to begin early 2016 and end in early 2018.

2. DISTRICT AGREES:

- a. Develop 100 percent design plans and specifications for Project.
- b. Advertise Project for construction bids, to award and administer the construction contract(s) and to cause Project to be constructed in accordance with the said plans and specifications.
- c. LADWP funds will be used solely for actual construction costs, activities performed by District's contractors and subcontractors and shall not be used for District's staff, administration or management of any aspect of Project.
- d. Consult with LADWP on any fundamental design changes necessitated by unforeseen or unforeseeable conditions encountered during final design and/or construction of Project.
- e. Provide quarterly progress reports to LADWP through the completion of Project that should include the schedule, budget, work completed during the previous quarter, and an estimate of the percent completion. Progress reports shall be submitted to LADWP within 45 calendar days of the end of each respective quarter. Quarters shall be defined as the periods from January 1

to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

- f. Provide reasonable notice to LADWP to participate in Project meetings.
- g. Upon approval of the Agreement by both Parties, to prepare and send invoice(s) to LADWP for the funds as described in Section 3, paragraphs a and b.
- h. Fund the design and/or construction contract(s) and/or construction management and/or construction contingency cost(s) of Project in excess of LADWP maximum contribution, as described in Section (3), paragraphs a and b. LADWP shall not be obligated to provide additional funding towards the completion of Project.
- i. Submit reimbursement(s) to LADWP of any unused LADWP funds within 90 calendar days after Project completion or expiration/termination of Agreement as described in Section 4, paragraphs a and f.
- j. Use generally acceptable accounting practices applicable to public agencies to account for, transfer, and reimburse funds deposited for Project.
- k. Keep LADWP apprised of information pertaining to the status of Project of which District becomes aware.
- l. Upon request, to provide construction documents and specifications to LADWP staff for review.
- m. Acknowledge LADWP as a Project partner in all material, publications, press releases, signage, and communications related to Project.
- n. Indemnify, defend, and hold harmless LADWP and its board, officers, agents, and employees harmless from and against any claims, demands, liability, damages, costs and expenses, including, without limitation, attorney fees and costs of litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, including any environmental damage or harm, which arise out of any active negligence or willful misconduct of District or its board, officers, agents, employees, or which arise out of any negligence or willful misconduct caused or alleged to be caused by any of District's contractors or subcontractors of any tier in any way relating to or arising out of this Agreement. This paragraph "n" shall apply except to the extent that the claim, demand, liability, damage, cost or expense arises from the sole negligence or willful misconduct of LADWP, its board, officers, agents, or employees.

Provisions of this section shall survive expiration or termination of Agreement.

3. LADWP AGREES:

- a. Fund the costs associated with the construction contract(s) for the Project, up to a maximum amount of \$550,000.
- b. Not later than 90 days after the receipt of an invoice from District, to deposit with District the amount of \$550,000.
- c. Provide reasonable notice to District of its request to participate in Project meetings; however, District's determinations regarding Project will be final.
- d. Participate and provide technical assistance to District regarding Project.
- e. Provide Project input in a timely manner.
- f. The Contract Administrator for LADWP shall be LADWP's Director of Water Resources, or his designee.
- g. Acknowledge District as a Project partner in all material, publications, press releases, signage, and communications relating to Project.

Provisions of this section shall survive expiration or termination of Agreement.

4. IT IS MUTUALLY UNDERSTOOD AND AGREED:

- a. Agreement may be executed in separate parts by Parties. Agreement shall be effective upon the date it is executed by all Parties and will expire by its own operation 3 years after execution, unless extended or sooner terminated by mutual written agreement by all Parties. All work described in Section 1, shall be completed by the expiration of Agreement.
- b. District shall have the right to reject all bids after notifying LADWP and may re-advertise Project if District deems such action is to be in the best interests of District.
- c. Design, construction, and project management for Project will be performed in accordance with said plans and specifications following District standards and practices current as of the date of performance.
- d. Each Party shall have no financial obligation to the other Party under Agreement, except as herein expressly provided.
- e. At the sole discretion of District, Project may be designed, advertised, awarded, and constructed in up to two separate construction contracts.

- f. In determining the amount of LADWP's contribution described in Section 3, paragraphs a and b, the actual construction costs for Project, and therefore LADWP'S portion thereof, shall be reduced by one-half of the amount of any grant funding or other outside funds for the construction of the Project that are secured by District or LADWP (if any).
- g. Agreement may be modified only by mutual written consent of District and LADWP. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the Parties' Directors or their delegates.
- h. Agreement shall be governed, interpreted under, construed and enforced in accordance with the laws of the State of California.
- i. If any provision of Agreement shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of Agreement shall not be affected and shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in Agreement.
- j. All Parties have been represented by counsel in the preparation and negotiation of Agreement and Agreement shall be deemed drafted and construed by all Parties so as to not be construed against any of them if deemed ambiguous.
- k. LADWP shall have the opportunity to participate and provide input to the work performed by District including the development of work plans and the review of draft plans, reports and other design documents.
- l. LADWP and District shall be required to make staff reasonably available, if requested, to participate and provide input at scheduled meetings, design workshops, community meetings and workshops, construction meetings, etc., for Project.
- m. Notwithstanding any other provision of Agreement, District may determine not to implement Project or any portion of Project if the environmental review pursuant to the California Environmental Quality Act (CEQA) discloses that Project, or portion thereof, will have significant environmental impacts and the District determines that such impacts cannot be feasibly mitigated. In the event District, pursuant to this paragraph "m," determines not to implement the Project, Agreement shall be deemed terminated and the Parties shall have no further obligations to each other under Agreement. In the event District, pursuant to this paragraph "m," determines not to implement a portion of Project, Agreement shall be deemed terminated as to that portion of Project only, and the Parties shall have no further obligations to each other under Agreement as to that portion of Project.

- n. Either Party may terminate Agreement for any reason in whole or in part by giving the other Party 30 calendar days written notice by certified mail with return receipt requested. In the event of termination by either Party prior to the completion of the Project, the Parties agree to take all reasonable measures to prevent the accrual of further costs under Agreement. All Parties shall be responsible for any reasonable and non-cancelable obligation incurred in the performance of Agreement until the date of the notice to terminated, but only up to the unpaid balance of funding authorized under Agreement.
- o. In the event that Agreement is terminated by either Party prior to the completion of the Project, the District shall return any unused funds for the Project previously deposited by LADWP pursuant to this Agreement, if any. District shall also provide to LADWP an accounting of the funds applied to Project with a copy of any completed or work-in-progress design documents and shall have no further obligation or liability to LADWP or City in regard to the performance of Agreement.
- p. In the event that performance on the part of any Party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said Party, none of the Parties shall incur any liability to the other Parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the Parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal government or any unit of State or local government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by Parties willful or negligent acts or omission, and to the extent that they are beyond the Party's reasonable control.

Provisions of this section shall survive expiration or termination of Agreement.

5. RIGHT TO AUDIT

District shall maintain, and shall cause District's consultants and/or suppliers as applicable to maintain all records pertaining to the management of Agreement, and related subcontracts, and performance of services pursuant to Agreement, in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to Agreement. If District, District's consultants and/or suppliers are required to submit cost or pricing data in connection with Agreement, District shall maintain

all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. All records shall be retained, and shall be subject to examination and audit by LADWP personnel or by LADWP's agents (herein after referred to as Authorized Auditors), for a period of not less than 5 years following payment made by LADWP hereunder or the expiration date of Agreement, whichever is later.

District shall make said records or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at District's offices at all reasonable times and without charge. Authorized Auditors will have the right to reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by District on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. District shall not, however, be required to furnish the Authorized Auditors with commonly available software.

District, and District's contractors, consultants and/or suppliers, as applicable to the services provided under Agreement, shall be subject at any time within 60 calendar days, prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation.

Examinations and audits will be performed using generally accepted auditing practices and principles and applicable City, County, State, and Federal government audit standards. For consultants, subconsultants, and suppliers that utilize or are subject to Federal Acquisition Regulation (FAR), Parts 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits will utilize such information.

To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete or noncurrent records, or records are unavailable, the records shall be considered defective.

Consistent with standard auditing procedures, District will be provided 60 calendar days to review the Authorized Auditor's examination results or audit and respond to LADWP prior to the examination's or audit's finalization and public release.

If the Authorized Auditors' examination or audit indicates District has been overpaid under a previous payment application, the identified overpayment amount shall be paid by District to LADWP within 90 calendar days of notice to District.

If applicable, District shall contractually require all contractors, consultants and suppliers performing services under Agreement to comply with the provisions of this section by inserting this provision PSC-22 in each contractor's contract and

by contractually requiring each subcontractor to insert this provision PSC-22 in any of its subcontractor contracts related to services under Agreement. In addition, District, their contractors, consultants, and/or suppliers, shall also include the following language in each contract:

"The Los Angeles Department of Water and Power (LADWP) is a third party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of LADWP. The designation of LADWP as a third party beneficiary of the audit provision shall not confer any rights or privileges on District, contractors, consultants or any other person/entity."

Provisions of this section shall survive expiration or termination of Agreement.

6. NOTICES

All notices provided under Agreement must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either:

(1) personally delivered to the address indicated below; or (2) on the third business day following deposit, postage prepaid, using certified mail, return receipt requested, in any United States Postal mailbox or at any United States Post Office; or (3) on the date of transmission by facsimile to the number provided below. All notices, demands, or requests shall be addressed to the following:

LADWP: Mr. David R. Pettijohn
Director of Water Resources
Los Angeles Department of Water and Power
111 North Hope Street, Room 1460
Los Angeles, California 90012
Phone: (213) 367-0899

District: Mr. Christopher Stone
Assistant Deputy Director
County of Los Angeles
Department of Public Works
Water Resources Division
P.O. Box 1460
Alhambra, California 91802-1460
Phone: (626) 458-6100

7. COMPLETE AGREEMENT

Agreement contains the full and complete Agreement between District and LADWP related to Project. No verbal agreement or conversation with any officer or employee of either Party shall affect or modify any of the terms and conditions of Agreement.

IN WITNESS WHEREOF, each Party hereto has caused Agreement to be executed by their duly authorized representatives.

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

By:


MARCIE L. EDWARDS
General Manager

Date:

And:


BARBARA E. MOSCHOS
Secretary

AUTHORIZED BY RES. 015 221

JUN 02 2015

APPROVED TO FORM AND LEGALITY
CITY ATTORNEY

MAY 14 2015

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by their duly authorized representative.

**LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT,
a body corporate and political**

Date: _____ By: _____
Chief Engineer

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By 
Deputy